

## 2) Is the town ordinance preempted?

The Court's opinion [[Stephen E. Forster v. Town of Henniker](#) (June 12, 2015)] also includes an informative discussion of the doctrine of preemption and whether the town's zoning ordinance was preempted by [RSA 21:34-a](#). Generally speaking, municipal legislation is invalid if it is inconsistent with state law. A local ordinance is preempted when the comprehensiveness and detail of the state statutory scheme shows legislative intent to supersede local regulation, or when there is an actual conflict between state and local law, or when a municipal ordinance permits that which a state statute prohibits or vice versa.

The petitioner argued that the purpose of [RSA21:34-a](#) is to create a uniform application of the term agritourism across the state to enhance the economic viability of New Hampshire farms. On that basis, he argued that the agritourism statute mandates that Henniker cannot prohibit activities that meet the statutory definition of "agritourism".

The Court said that [RSA 21:34-a](#) is "a set of definitions, not a comprehensive statutory scheme aimed at superseding local regulation." [RSA 21:34-a, VI](#) merely defines agritourism; it contains no mandate to municipalities. The Court said the statute does not require that municipalities adopt the same definition in their local ordinances. "Nor does it mandate that municipalities allow activities that meet the statutory definition of agritourism. Because [RSA 21:34-a](#) contains no mandate, the town's ordinance necessarily does not conflict either with its language or its purpose."

Although other statutes relating to agriculture contain mandates to municipalities, the Court pointed out that none use the word "agritourism."

The Court reviewed the relevant statutes ([RSA 674: 17,I\(i\)](#); [RSA 672:1,III-b](#); [RSA 672: 1,III-d](#); and [RSA 674:32-a](#)) and commented that, "[n]one [of these] support the petitioner's contention that the legislature intended to require municipalities to allow agritourism within their borders. Moreover, they demonstrate legislative intent to allow reasonable local regulation, not to preempt the entire field." According to the Court, "should town voters want to allow the petitioner's proposed uses in the rural residential district, they are free to amend the town's ordinance as they see fit."

This is an excerpt from NHMA Law Lecture #1 - **Developments in the Law: Accessory Dwelling Units, Agritourism, and Signs** - Fall 2016. This lecture explores a trio of recent legal developments including the New Hampshire's Supreme Court's decision in *Forster v. Town of Henniker*. This opinion is instructive on several legal issues including implied preemption - whether state laws on a particular topic are so comprehensive that they preempt conflicting local ordinances.